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No. 84-570

In The Supreme Court of the United States

October Term, 1984

JOAN RANCE VUYANICH, ET AL.,

Petitioners,

v.

REPUBLIC NATIONAL BANK OF DALLAS,

Respondent.

Petitioners' Reply Brief in Support of Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Petitioners respectfully submit this statement in reply to respondent's Brief in Opposition (hereinafter respondent is referred to as "the Bank" and its Brief as "Brief in Opp.").

Petitioners submit that, respondent's assertions notwithstanding, this case presents a fully-developed record upon which to decide the appropriate scope of class actions in federal court in the discrimination area and, if the Court chooses, generally as well.

Question 1: Did the District Court's thrice-made finding of "a common discriminatory animus" flowing from a "central policy" of discrimination constitute "[s]ignificant proof [of] a general policy of discrimination"?

After describing petitioners' arguments as "mischaracterizations" and "misreading[s]," Brief in Opp. 5, the Bank argues, first (Brief in Opp. 6-8), that Judge Higginbotham's

mode of fact-finding violated the holding of *General Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147 (1982), and, second (Brief in Opp. 8-10), that Judge Higginbotham's findings were insufficient under *Falcon* to constitute "proof [of] a general policy of discrimination . . . ," *Id.* at 159 n. 15. Neither argument is meritorious; neither argument reflects the holding of the court of appeals.

First, Judge Higginbotham correctly understood Rule 23 and this Court's decisions construing the rule, and he correctly predicted this Court's decision in *Falcon*. Contrary to the Bank's assertions about Judge Higginbotham's "disregard" and "failures," Brief in Opp. 6, 7, the district judge did what *Falcon* directed; he held lengthy hearings about, and he fully discussed in three opinions, each of Rule 23's prerequisites, including those stressed by the Bank, commonality and typicality. Pet. App. E, 62a-69a; App. F, 368a-381a; App. G, 391a-395a. The court of appeals' discussion of commonality and typicality, Pet. App. B, 6a para. 2, did not mention any of Judge Higginbotham's findings or the proof upon which he relied.

Second, Judge Higginbotham found three times that "a common discriminatory animus" flowed from the Bank's "central policy" of sex and race discrimination. Pet. App. E, 58a-59a; App. F, 368a-371a; App. G, 392a-393a. These findings satisfied *Falcon's* "significant proof [of] a general policy of discrimination . . . ." 457 U.S. at 159 n. 15. While the Bank argues that the evidence upon which Judge Higginbotham relied "was not competent," Brief in Opp. 9, neither the majority nor the five dissenting judges in the court of appeals so held or so intimated.

Third, what the majority of the court of appeals actually held — and it was to this that Judges Rubin and Tate, for

five dissenting judges, responded — was this: a general policy of discrimination cannot be shown where an employer used some objective criteria "in its necessarily subjective hiring process . . . ." Pet. App. B, 7a. While the Bank relegates the court's actual holding to a footnote, Brief in Opp. 10 n. 6, and characterizes petitioners' statement of the holding as "grossly exaggerate[d]," "considerably overdramatic," and "misleading," *id.*, petitioners respectfully refer the Court to Judges Rubin and Tate's description of the holding. Pet. App. C, 16a-18a. Without exaggeration, dramatics, or misleading, Judges Rubin and Tate, speaking for five judges, said that "an employer should not be able to stop certification of class-action in its tracks by simply alleging that hiring is based on 'objective' qualifications of 'education' and 'experience.'" Pet. App. C, 17a.

Questions 2-4

Petitioners stand on their petition with respect to these questions.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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